

Message

From: Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]
Sent: 10/19/2016 5:49:15 PM
To: Welles, Laura [Welles.Laura@epa.gov]
Subject: RE: Whole Foods - draft CAFO

No strict practice, but whether it's admin or judicial I typically have "Draft/Deliberative/Attorney Work Product/Do Not Release Under FOIA" as a page header.

Btw, **Ex. 5 Attorney Client (AC)**

From: Welles, Laura
Sent: Wednesday, October 19, 2016 1:46 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Whole Foods - draft CAFO

I feel silly asking this, but what do you typically put on a draft CAFO (e.g., heading in the document) when sending to opposing counsel?

I usually just put DRAFT (or if in court include 408), but I didn't know if EPA did something else for admin cases...

Thanks.

From: Fogarty, Johnpc
Sent: Wednesday, October 19, 2016 1:33 PM
To: Welles, Laura <Welles.Laura@epa.gov>
Subject: RE: Whole Foods - draft CAFO

Nope – sounds good!

From: Welles, Laura
Sent: Wednesday, October 19, 2016 1:32 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Whole Foods - draft CAFO

Ok – so I'll accept the redline changes in the draft, add a paragraph re: "Annual implementation progress reporting," certification comment and stip. Penalty comment, and check the paragraph x-ref numbering in paragraphs 40-43.

Anything else before I send to WF?

I started an itemized list re: your last email – I'll finish it after I send the draft CAFO to WF.

From: Fogarty, Johnpc
Sent: Wednesday, October 19, 2016 1:27 PM
To: Welles, Laura <Welles.Laura@epa.gov>
Subject: RE: Whole Foods - draft CAFO

I have done a VERY quick review. I think it's OK to send in advance, we'll just need to caveat it as a rough first draft. A few items:

Ex. 5 AC/AWP/DP

Thx!

From: Welles, Laura
Sent: Wednesday, October 19, 2016 12:52 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Whole Foods - draft CAFO

Quick thoughts about this draft:

Ex. 5 AC/AWP/DP

I think that's it for now.

If we can get this to WF before the call, I'd like to focus on confirming SQGs/CESQG and paragraphs 59 to 62. I'd also like to start the discussion on SEPs.

Also – if we send, I plan to send in pdf not word.

Let me know if you have any questions, etc.

Laura

From: Fogarty, Johnpc
Sent: Wednesday, October 19, 2016 10:38 AM
To: Welles, Laura <Welles.Laura@epa.gov>
Subject: RE: Whole Foods - draft CAFO

I will watch for it and see what I can do. Since I saw it once already I'm sure it'll be ok. We should identify what sections we want them to comment specifically on.

From: Welles, Laura
Sent: Wednesday, October 19, 2016 10:14 AM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Whole Foods - draft CAFO

I'm still working on the body of the CAFO – no appendices yet... I'll send you what I have around 12:30/1:00 – I'm not sure that's enough time for you to review before sending along to WF.

From: Fogarty, Johnpc
Sent: Tuesday, October 18, 2016 3:01 PM
To: Welles, Laura <Welles.Laura@epa.gov>
Subject: RE: Whole Foods - draft CAFO

Agree.

From: Welles, Laura
Sent: Tuesday, October 18, 2016 2:04 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Whole Foods - draft CAFO

Ex. 5 AC/AWP/DP

Let's leave it that I'll see how far I can get and I'll give you an update tomorrow morning. All in all, I'd rather get it right...

From: Fogarty, Johnpc
Sent: Tuesday, October 18, 2016 1:31 PM
To: Welles, Laura <Welles.Laura@epa.gov>
Subject: RE: Whole Foods - draft CAFO

See below -

From: Welles, Laura
Sent: Tuesday, October 18, 2016 1:15 PM
To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>
Subject: RE: Whole Foods - draft CAFO

Thanks for the background.

Ex. 5 AC/AWP/DP

Ex. 5 AC/AWP/DP

Thoughts, etc. I'll also check in with Diana and Andy so that the CAFO is consistent with other RCRA settlements.

I took a quick look at the materials WF set up on the Box cloud. I found them helpful, especially more insight to the types of consumer products and the

Ex. 4 CBI

Ex. 4 CBI

Thx – I intend to do that before our call.

The other materials reflect the organizational structure of WF – national policy, regional policy, and then any state-specific requirements.

With regard to the draft CAFO, I'll look at the IR and try to tailor it more to WF's program. I also want to start to discuss timelines with you for IR (e.g., by X date, submit current list of consumer products each Respondent currently manages, etc.). I still think it makes sense to have much of the IR in appendices, especially if WF is going to designate most of the materials as CBI. Agree. Even for now, we can just put X's in for this draft.

Is the plan to try and get this draft CAFO to WF a few hours before the meeting tomorrow? It might be tight, but probably a big step in moving this along... Agree that would be optimal – if you can do that, great, but if you can't then we can maybe send just after the call (the materials have only been available for a couple days). If we send before the call but you're only part-way on tailoring the IR to WF's program we can note that caveat (call it a "work in progress") and handle along the lines we talked about earlier – gives them an idea of what we're thinking about, but ask for comments/redline only on selected sections.

One other option to think of -

Ex. 5 AC/AWP/DP

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From: Fogarty, Johnpc

Sent: Tuesday, October 18, 2016 9:47 AM

To: Welles, Laura <Welles.Laura@epa.gov>

Subject: RE: Whole Foods - draft CAFO

Sure thing. There are probably some other folks in WCED who are more facile on part 22 than I am (I tend to work primarily on civil judicial), but my go-to for admin lit questions is Gary Jones). For the two items below, it's sort of a belt-and-suspenders thing. 22.8 prohibits ex parte communications once a complaint is filed. Here, since we're jumping immediately to settlement, that prohibition arguably doesn't apply, but just to remove any question or issue we typically provide that for a waiver of the prohibition.

For the PRA, that law limits what info we can require of a private party to be submitted to us, without OMB approval. There's a law enforcement exemption for that, but just remove any doubt/preclude the defendant from raising it as a defense if we're investigating noncompliance with the CAFO, we provide that the PRA is likewise waived (I put it in all my CDs).

From: Welles, Laura

Sent: Monday, October 17, 2016 6:32 PM

To: Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>

Subject: RE: Whole Foods - draft CAFO

Got it – thanks. I found them helpful and they made me think of other things I overlooked or wanted to describe more, etc.

At some point I have some general questions to ask you re: some of the waivers I'm not familiar with, but see in many of EPA's CAFOs, including Walmart (e.g., 40 CFR § 22.8, paperwork reduction act).

From: Fogarty, Johnpc
Sent: Monday, October 17, 2016 6:10 PM
To: Welles, Laura <Welles.Laura@epa.gov>
Subject: Re: Whole Foods - draft CAFO

Also, just to be clear, my edits, etc are all really just suggestions - if you think they're not apt, have a different view, etc, pls feel free to push back.

Sent from my iPhone

On Oct 17, 2016, at 5:49 PM, Welles, Laura <Welles.Laura@epa.gov> wrote:

I'm in the process of incorporating your edits, etc. into the draft CAFO.

With regard to your questions/comments in the draft CAFO about all Whole Foods Markets being CESQGs, I think you're right – WF indicated to us during the first meeting that their stores = CESQGs. I want to confirm with them again. I did an ECHO search – of the WF stores listed (only about one or two dozen were listed), most were CESQS (or there was no RCRA info) except this Chicago store was SQG – <https://echo.epa.gov/detailed-facility-report?fid=110005966598>. I don't fully trust the data in ECHO, but thought it was worth following up with WF.

Laura

Laura Welles
Attorney Advisor
Waste and Chemical Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency
(202) 564-2754